

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NATIONAL COALITION ON :
BLACK CIVIC PARTICIPATION, et al., :
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Plaintiffs, :
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- against - :
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JACOB WOHL, et al., :
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Defendants. :
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DATE FILED: May 20, 2021

20 Civ. 8668 (VM)

ORDER

VICTOR MARRERO, United States District Judge.

On May 19, 2021, Defendants filed a letter to “clarify” and “correct the record” in response to the Court’s May 19, 2021 Decision and Order. (“May 19 Letter,” Dkt. No. 105.) While setting forth the procedural history of this matter in the Court’s May 19, 2021 Decision and Order, the Court stated: “On October 26, 2020, the Court held a hearing (the ‘October 26 Hearing’) on Plaintiffs’ motion for a TRO at which Wohl and Burkman appeared pro se, as their secured counsel was not yet available.” (“May 19 Order,” Dkt. No. 101, at 2.) Defendants’ counsel writes in the May 19 Letter: “As a point of clarification, as Mr. Burkman stated in his opening remarks at the October 26, 2020 hearing, in pertinent part, ‘Your Honor, this is Jack Burkman. Unfortunately, **we have not yet been able to secure counsel**. We did yesterday, and counsel will be available tomorrow . . . he will be available on the case literally within 24 hours or so’” (May 19 Letter at 1.) Counsel also writes that “we were not retained, and did not file our respective Notices of Appearance, until after the hearing.” (Id.)

Having reviewed the May 19 Letter and the transcript of the October 26 Hearing, the Court observes nothing in the May 19 Letter that requires clarification of the May 19 Order. There is no discrepancy between the language at issue in the May 19 Order and the quote from Jack Burkman ("Burkman") in the May 19 Letter. Although at the October 26 Hearing Burkman did initially state "we have not yet been able to secure counsel," he subsequently added, "*We did yesterday, and counsel will be available tomorrow.*" (Tr. at 2:25-3:1 (emphasis added).) In fact, in response to a further question from the Court as to the efforts made to seek counsel and the availability of counsel, Burkman stated, "*We have secured counsel by the name of David Schwartz. . . . We rushed as fast as we could to get a lawyer, and we have secured him as of yesterday, and he will be available on the case literally within 24 hours or so.*" (Id. at 3:10-15 (emphasis added).) When the Court asked about "who Mr. David Schwartz is," Burkman stated, "I think a fairly well-known civil litigator in New York City, and we have retained him." (Id. at 3:18-22 (emphasis added).) Following this response, the Court stated, "In light of that, we're going to proceed since we have a record in the hearing. . . . I will give the defendants each an equal amount of time to present their case pro se, and I will give them an opportunity to supplement whatever they indicate now by submission by Mr. Schwartz not later than close of business tomorrow." (Id. at 3:24-4:8.)

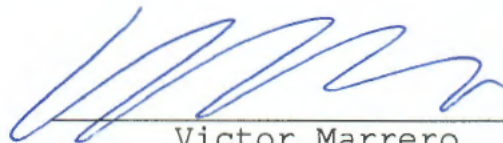
The Court thus does not find any inconsistency between these statements of Burkman -- which clearly conveyed to the Court that

counsel had been secured and would be available the following day -- and the Court's statement in the May 19 Order that at the hearing, "Wohl and Burkman appeared pro se, as their secured counsel was not yet available."

To the extent the May 19 Letter takes issue with the Court's decision to proceed with the October 26 Hearing despite Defendants' appearances pro se, the Court has already addressed substantially similar arguments when denying Defendants' motion for reconsideration and first motion for a stay. (See "October 29 Order," Dkt. No. 41.) The Court also reminds Defendants that it did accommodate Defendants' request for time to secure counsel by scheduling the TRO hearing for Monday, October 26, 2020 rather than earlier in response to Burkman's request for "just a few days" to secure counsel. (See id. at 3.)

SO ORDERED.

Dated: New York, New York
20 May 2021



Victor Marrero
U.S.D.J.